

OFFICE OF TAX APPEALS
STATE OF CALIFORNIA

In the Matter of the Appeal of:) OTA Case No. 19115455
O. CASIMIRO AND)
M. CASIMIRO)
_____)

OPINION

Representing the Parties:

For Appellants: O. Casimiro and M. Casimiro

For Respondent: Melisa Recendez, Legal Assistant

S. RIDENOUR, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, O. Casimiro and M. Casimiro (appellants) appeal an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$587, and applicable interest, for the 2015 tax year.

Appellants waived their right to an oral hearing; therefore, the matter is being decided based on the written record.

ISSUE

Whether appellants have established error in FTB's proposed assessment, which is based on information received from the Internal Revenue Service (IRS).

FACTUAL FINDINGS

1. Appellants timely filed a joint 2015 California resident income tax return (Form 540).
2. Subsequently, FTB received information from the IRS indicating that appellants' 2015 federal adjusted gross income (AGI), as accepted by the IRS, was \$12,362 more than the federal AGI appellants reported on both their 2015 California and federal returns.
3. Based on the IRS information, FTB issued appellants a Notice of Proposed Assessment (NPA) that increased appellants' federal AGI by \$12,362, and proposed additional tax of \$665, plus applicable interest.

4. Appellants protested the NPA, asserting that they filed an amended 2015 federal return (Form 1040X). Appellants included with their protest a copy of their 2015 federal Tax Return Transcript to show that the federal AGI they reported on their California tax return matched the amount they reported on their federal return.
5. In response, FTB sent appellants a letter stating that it adjusted their 2015 California tax return based on information it received from the IRS, and that California law requires that the federal AGI reported on a California tax return must match the amount reported on the federal return, or as revised by the IRS. The letter requested that if the IRS reverses or cancels its adjustments to appellants' federal AGI, appellants should provide substantiating documentation to FTB. The letter also stated that FTB was revising the proposed assessment to allow additional withholding credits of \$78.
6. When FTB did not receive a response, it issued appellants a Notice of Action (NOA). The NOA revised the NPA by allowing additional withholding credits of \$78, thereby reducing the additional tax from \$665 to \$587, plus applicable interest.
7. Appellants filed this timely appeal.
8. On appeal, FTB provided a copy of appellants' 2015 federal Account Transcript (account transcript) dated February 6, 2020. The account transcript shows appellants' federal AGI being \$12,362 more than the federal AGI appellants reported on their 2015 California return. The account transcript also shows that the IRS assessed additional tax and imposed a late-payment penalty, and that appellants paid the outstanding liability.

DISCUSSION

R&TC section 17041 imposes a tax upon the entire taxable income of every resident of this state. R&TC section 18501 requires every individual subject to the Personal Income Tax Law to make and file a return with FTB, "stating specifically the items of the individual's gross income from all sources and the deductions and credits allowable" The federal definition of AGI found in Internal Revenue Code section 62 is incorporated into California law by R&TC section 17072. Accordingly, taxpayers must report the same federal AGI on both their federal and California returns, except as otherwise provided by California law.

FTB's determination of tax is presumed to be correct, and a taxpayer has the burden of proving error. (*Todd v. McColgan* (1949) 89 Cal.App.2d 509.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Gorin*, 2020-OTA-018P.)

A taxpayer must report federal changes to income or deductions to FTB within six months of the date the federal changes become final. (R&TC, § 18622(a).) The taxpayer must concede the accuracy of the federal changes or prove that those changes are erroneous. (*Ibid.*)

Appellants contend that their 2015 IRS Tax Return Transcript, which lists the amounts shown on their original federal return, prove that they properly reported their federal AGI on their California return and, therefore, the resulting tax was accurately computed as filed. However, after appellants filed their 2015 California return, FTB received information from the IRS showing that appellants' 2015 federal AGI, as accepted by the IRS, was higher than the federal AGI appellants reported on their federal and California returns, and that the IRS assessed additional tax. Appellants did not notify FTB of the federal changes.

The discrepancy between appellants' federal AGI, as reported on their federal and California returns and as accepted by the IRS, appears to be due to appellant-wife's income from N. Enterprises. Appellants reported appellant-wife's income from N. Enterprises in the same amount as reported on appellant-wife's Form W-2 that they filed with their returns; however, it appears that the amount reported was in error. According to appellants' 2015 Wage and Income Transcript, N. Enterprise reported that appellant-wife received \$13,177 more than the amount appellants reported on their return.¹ Additionally, according to appellants' account transcript, the IRS assessed additional tax and imposed a late-payment penalty, which is consistent with appellants' underreporting of appellant-wife's income. Furthermore, according to appellants' account transcript, their federal AGI, as accepted by the IRS, is \$12,362 more than the federal AGI appellants reported on their returns. As relevant here, it appears that the IRS made adjustments to appellants' federal AGI due to appellants' error in reporting appellant-wife's income from N. Enterprises. While appellants' Tax Return Transcript only shows the original amounts they reported on their federal return, appellants' Wage and Income Transcript and account transcript both reflect subsequent IRS-adjusted amounts, which are controlling here.

Appellants have not provided evidence to contradict these subsequent federal adjustments or otherwise shown that they are in error. While appellants contend that they have filed an amended 2015 federal return, appellants have not provided any evidence showing that the IRS accepted the amended return or that the IRS revised the federal determination. According to

¹ FTB states that although appellant-wife received \$13,177 more from N. Enterprises than appellants reported, FTB would accept the lower IRS-revised AGI increase amount of \$12,362. As this is in taxpayers' favor, we will not address it further.

appellants' 2015 account transcript, the IRS increased appellants' federal AGI, assessed additional tax, and imposed a late-payment penalty. The account transcript also shows that the entire amount of the liability was satisfied. The account transcript does not show that the federal determination was cancelled or revised. Accordingly, appellants have not satisfied their burden of proof to show that FTB's proposed assessment was erroneous.

HOLDING

Appellants have failed to establish error in FTB's proposed assessment, which is based on information received from the IRS.

DISPOSITION

FTB's action is sustained.

DocuSigned by:
Sheriene Anne Ridenour
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Sheriene Anne Ridenour
Administrative Law Judge

We concur:

DocuSigned by:
Tommy Leung
0C905428E88D4F7
Tommy Leung
Administrative Law Judge

DocuSigned by:
E. L. Ewing
2D8DE82FB65E4A6
Elliott Scott Ewing
Administrative Law Judge

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